



## TOWN OF BEAUX ARTS VILLAGE

### BOARD OF ADJUSTMENT

### MINUTES

June 2, 2004  
Welsh

**PRESENT:** Board Chairman Bob Welsh, Boardmembers Steve Matsudaira, Steve Hauck and Kevin Peterson.

**CLERK:** Betsy Donworth

**GUESTS:** Town Attorney Wayne Stewart and Town Planner Mona Green, Julia Christofferson, Jen Molbak, Blair Carleton, Barbara Welsh, Kevin Kay, Jenny Kay, Jan Johnston, Steve Miller, Wesley Pierce, Malcolm Hickey.

**MINUTES:** The Minutes from the May 5, 2004 meeting were approved as read.

**RESIGNATION OF JAN JOHNSTON:** Chairman Welsh stated that Jan Johnston has resigned from the Board of Adjustment. He thanked her for her time on the Board, which began on June 7, 1997.

### **REVIEW OF CODE ENFORCEMENT COMPLAINT**

The Town of Beaux Arts Village Board of Adjustment, acting as the Town's Building Official, heard the zoning code enforcement complaint submitted by Beaux Arts Village resident Jim Finnell, regarding the Kendall's house located at 10516 SE 29<sup>th</sup> Street, Beaux Arts, WA. The complaint is that the home under construction is not in compliance with Beaux Arts Village height restrictions as defined in Zoning Code Ordinance 289.

Joe Willis, Town of Beaux Arts Village Building Official, wrote in his memo dated May 24, 2004 that Beaux Arts Village Ordinance No. 289 provides for "Base Elevation" establishment by averaging the elevation of the existing grade at each corner of the exterior walls of the building. A maximum of eight (8) corners of wall intersections may be used. He also stated that the building permit applicant (Jeff Kendall, permit no. 03-9) utilized the "Gross Floor Area" method of calculation for establishment of the "Base Elevation". This method averaged the corner elevations multiplied by the wall length between the two points and thereby averaged the building height per lineal foot of the structure. The result was a base elevation = elevation 129.45. The "Base Elevation" method (simply averaging the building corners) would have = elevation 129.65. In the subject case, a licensed Surveyor has verified that the new structure height is under the required maximum of 30 feet above the "Base Elevation".

In their letter dated April 1, 2004, Harstad Consultants state that they located the highest top of the plywood ridge of the Kendall home on March 26, 2004 and found that:

1. The height of the top of plywood at the west end of the plywood is 159.29 feet which is based on the horizontal and vertical control of the August 7, 2003 topographic and utility survey prepared by Harstad Consultants.
2. The maximum allowable building height is 159.45 feet as shown on sheet 10 of the house plans for the Kendall residence prepared by Baypoint Corporation of Bellevue, Washington.
3. According to the roofing contractor, Mr. George Bear of Larry Haight's Residential Roofing Company Inc., the composition roof adds 1-1/2 inch to the top of the roof ridge height, which would make the height 159.41 feet or 0.04 feet below the maximum allowable building height (30 feet).

The Board of Adjustment reviewed the calculations supplied by the Surveyor, the base elevation calculations contained the Kendall's building plans, and the memo written by Joe Willis. Chairman Welsh recalculated the numbers; yet taking into consideration his recalculation, the building did not exceed the 30 foot height limit required in Zoning Code 289. After some discussion, **the Board of Adjustment agreed unanimously to accept the calculations of the independent surveyor, Harstad Consultants, as correct.**

#### **VARIANCE NO. 04-1**

Variance NO. 04-1 was continued from the June 2, 2004 meeting. Applicants Kevin and Jenny Kay are requesting a variance (from Sections 8.B and 9.A of the Town of Beaux Arts Village Zoning Code Ordinance (No. 289) in order to expand the footprint of a legal nonconforming structure on a legal nonconforming lot. Variance 04-1 (which has been modified) now includes 2 variance requests:

Variance #1: Variance from Section 8.B of Ordinance 289 to allow a 6'2" encroachment into the required 10' side setback (south side) for a length of 24'.

Variance #2: Variance from Section 9.A of Ordinance 289 to allow a one car garage instead of the required two-car garage.

Chairman Welsh asked the Boardmembers present if they had participated in any ex parte conversation regarding this application. Board Chairman Welsh reported he had a discussion with Ruth Cowan, who called indicating that she is concerned about trees coming out and the utility pole.

A second letter from Sylvia Hobbs, requesting the Board deny the Kay variance, was read and entered into the record. Board Chairman Welsh asked if any Boardmember had a conflict of interest in hearing the variance. No conflict of interest was noted. There were no challenges from the applicant or public as to appearance of fairness of any Boardmember to hear the variance.

#### **STAFF PRESENTATION:**

Town Planner Mona Green stated that the Staff Report she gave at the May 5, 2004 hearing has not changed. Her opinion was restated as follows: Kevin and Jenny Kay plan to reconstruct their existing non-conforming single-family residence in order to provide enclosed parking for one vehicle and to increase the square footage of their home. The lot is one of the smallest lots in Beaux Arts, containing 6,705 square feet, according to a survey prepared by Reid Middleton on October 29, 2002. Recent Beaux Arts' code changes allow minimum house size of 2500 square feet, including garage, regardless of the Gross Floor Area ratio. The Kay's house is currently 1,572 square feet; the reconstructed house will contain 2,385 square feet, including the garage.

A garage is proposed on the south side of the existing residence that would encroach 6'2" into the required 10' side setback. The resulting setback would be 3'10" for the entire 24' length of the garage. Currently, there are no encroachments into the south (side) setback. The garage would contain 350 square feet, less than the minimum 360 square feet required for a two car garage per Section 9.D.1. Thus, a variance is required for both the setback intrusion and construction of a 350 square foot (one-car) garage.

Planner Green stated the following regarding variance criteria:

1. The variance will not constitute a grant of special privilege inconsistent with the limitations upon use of other properties in the Town.  
Applicants satisfy this criterion for both of the variance requests. Reconstruction of a 2,385 square foot home, including a one-car garage, is not a grant of special privilege.
2. The granting of the variance will not be materially detrimental to the public welfare or injurious to other properties or improvements in the Town. It will be consistent with the Town's Comprehensive Plan.  
Applicants satisfy this criterion for each of the two variance requests. Additional on-site parking will benefit property owners and the public. Currently, the owners are not able to provide any covered parking. The additional parking space, to be constructed of a porous material, will not be injurious to other properties or improvements in the Town.
3. The variance is necessary because of special circumstances relating to the size, shape, topography, location, surroundings, and special features of the subject property.  
Applicants satisfy this criterion for each of the two variance requests. The special circumstance of the lot is its size: it contains 6,705 square feet instead of the minimum lot size of 10,000 square feet as required by Section 5 of Ordinance 289. In addition, the lot is located on 104<sup>th</sup> Avenue SE which does not allow for on-street parking.
4. The need for a variance has not arisen from actions previously taken by the applicant (owner)  
Applicants satisfy this criterion for both variance requests. The Kays purchased their home on September 12, 2002 and have not contributed to the lots' non-conforming status.
5. It is the minimum necessary to permit the owner reasonable use of the property.  
Applicants satisfy this criterion for both of the variance requests. The applicants have attempted to encroach as little as possible into the setback areas, while at the same time

planning for a home that meets the size requirements of the Section 8.H of the Zoning Code.

Planner Green concluded that it is her recommendation that the two variances that make up Variance #04-01 be approved by the Board of Adjustment

**APPLICANT'S PRESENTATION:**

Kevin Kay explained that he and his wife Jenny would like a variance to build a single car garage on the south side of the house. When he bought the house, he was assured, with confirmation in writing, that he could build a two car garage in front of the house. As it turned out, the information was incorrect and it is impossible to build even a single car garage in front or on either side of the house. He is proposing to tear down the existing stairway to the second floor, which is on the south of the house, and build a garage that extends 6'2" into the south setback. The foundation of the existing house is within inches of the 20' setback line in front and into the setback on the north. Since this project qualifies as a "reconstruction" rather than a "remodel" a variance is needed to allow for a 1 car rather than a 2 car garage.

Kay emphasized that the garage is not being added to make up square footage, but is necessary and it is a matter of where to locate the garage. Vegetation will be provided along the side of the home facing Ruth Cowan. In response to Sylvia Hobb's letter, he again emphasized that he bought the house with the assurance that he could build a garage in front of the house. He later found out that this was incorrect.

Architect Jan Johnston reaffirmed that Kevin Kay bought his house with the idea that he would build a garage in front, based on information from Bob Kirby, former Beaux Arts Village Building Official. This information being incorrect, the Kays have proposed a garage on the south side of the house which would require as small encroachment as possible. The requested encroaching portion of the garage is set back from the front of the house and aligns with the house to the south so the visual impact is as small as possible from that house. It also has a hip roof with a low slope to minimize the mass.

The validity of this request comes down to the intent of the zoning and variance process. If a garage is required and a variance cannot be granted to build it into the setback, the only other option is to tear down a large part of an existing house. The cost for this would be between \$30,000 and \$58,000, which seems unreasonable. She added the following regarding compliance with the 5 required variance criterion:

1. The variance does not constitute a grant of special privilege. Because of existing conditions or special circumstances many houses in Beaux Arts Village have a garage or carport within the required setbacks.
2. The granting of the variance will not be materially detrimental to the public welfare or injurious to other properties in the town. The proposed single car garage shelters one car and provides a storage area for tools, garden equipment, and garbage cans that would otherwise be exposed.

3. The variance is necessary because the location of the existing house is such that there is no space inside of the front or side set-back for a garage.
4. The need for a variance has not arisen from actions previously taken by the owner.
5. The variance is the minimum necessary. The proposed garage is set back by 7'0" from the front of the house and 30'9" (31'9" including overhang) from the front property line. It is lined up with the house to the south so it is minimally visible from the front and back yard of that house. It has a hip roof with a slope of 5.5/12 to minimize the bulk. The clear interior width of the garage is 11'5" which is the minimum necessary to open the doors of a full size car.  
In order to have a garage in this location the owner will be required to tear down the existing stairway to the second floor and build a new stairway in another part of the house.

#### **PUBLIC TESTMONY:**

Steve Miller stated his concern that if this variance were granted it would establish a precedent for small setbacks. Recognizing that variances do not legally set precedents, he argued that Beaux Arts is a small community and a precedent will be set anyway. He felt that the Kay's architect could increase the setback slightly. Chairman Welsh questioned Architect Johnston about putting the garage in the front setback. When considering this, Johnston stated that she felt that the structure would be really looming if it were to be constructed in the front and would bother Ruth Cowan even more than if it were intruding into the side setback.

Boardmember Peterson questioned whether the proposed plan was really the minimum necessary for building a garage on the property.

#### **STAFF CLOSING REMARKS:**

Planner Green stated that the minimum construction would be to have a garage for one car. The proposed one car garage is the minimum size required for reasonable use.

The Boardmembers have reviewed the application submittal against the five variance criteria of Ordinance No. 313, Section 1.

#### **The Board made the conclusions:**

##### ***Variance04- 1 (part one - one car garage)***

***Criterion 1. The variance will not constitute a grant of special privilege inconsistent with the limitations upon uses of other properties in the Town.***

The Board is unanimous that the variance satisfies Criterion 1.

***Criterion 2. The granting of the variance will not be materially detrimental to the public welfare or injurious to other properties or improvements in the Town. It will be consistent with the Town's Comprehensive Plan.***

The Board is unanimous that the variance satisfies Criterion 2.

***Criterion 3. The variance is necessary because of special circumstances relating to the size, shape, topography, location, and special features of the subject property.***

The Board is unanimous that the variance satisfies Criterion 3.

***Criterion 4. The need for a variance has not arisen from actions previously taken by the applicant (owner).***

The Board is unanimous that the variance satisfies Criterion 4.

***Criterion 5. It is the minimum necessary to permit the owner reasonable use of the property.***

The Board is unanimous that the variance satisfies Criterion 4.

**Variance No. 04-1 (part one) satisfies all five (5) of the variance criteria.**

***Variance-4-1 (part two - encroach on south setback)***

***Criterion 1. The variance will not constitute a grant of special privilege inconsistent with the limitations upon uses of other properties in the Town.***

Criterion 1 is satisfied: Hauck, Welsh, Matsudaira – Aye; Peterson - Nay

***Criterion 2. The granting of the variance will not be materially detrimental to the public welfare or injurious to other properties or improvements in the Town. It will be consistent with the Town's Comprehensive Plan.***

Criterion 2 is satisfied: Hauck, Welsh, Matsudaira – Aye; Peterson - Nay

***Criterion 3. The variance is necessary because of special circumstances relating to the size, shape, topography, location, and special features of the subject property.***

Boardmember Peterson stated that the applicant has not shown the minimum has been achieved.

Criterion 3 is satisfied: Hauck, Welsh, Matsudaira – Aye; Peterson - Nay

***Criterion 4. The need for a variance has not arisen from actions previously taken by the applicant (owner).***

The Board is unanimous that the variance satisfies Criterion 4.

***Criterion 5. It is the minimum necessary to permit the owner reasonable use of the property.***

Criterion 5 is not satisfied: Hauck, Matsudaira – Aye; Peterson, Welsh - Nay

**Variance No. 04-1 (part two) does not satisfy all five (5) of the variance criteria.**

### **DECISION:**

Based on the foregoing findings and conclusions **Variance No. 04-1** is hereby approved to allow a one car garage and denied to allow the garage to intrude into the south setback.

### **VARIANCE NO. 04-2**

Variance 04-2 was continued from the May 5, 2004 meeting. Applicants Blair Carleton and Jens Molbak are requesting a variance in order to allow a landscape structure to encroach 9' into two required 10' side setbacks, and in order to allow a landscape structure to encroach 14.5' into the required 25' rear yard.

Chairman Welsh discussed the letter he had written the Town Council regarding water features in setbacks. He feels that although water features are considered structures under Beaux Arts zoning codes (and therefore not allowed in setbacks) that Beaux Arts really does not have an ordinance that deals adequately with water features. Both Mona Green and Wayne Stewart stated that, as staff, they cannot ignore what BAV ordinances say. Wayne Stewart asked the Board to enter into an executive session.

Chairman Welsh asked the Boardmembers present if they had participated in any ex parte conversation regarding this application. Board Chairman Welsh reported he had discussions with Jens Molbak Kevin Peterson, Jan Johnston and Steve Hauck had none, and Steve Matsudaira had a conversation with Bob Welsh. Board Chairman Welsh asked if any Boardmember had a conflict of interest in hearing the variance. No conflict of interest was noted. There were no challenges from the applicant or public as to appearance of fairness of any Boardmember to hear the variance.

**Staff Report:** Planner Green stated that Wesley Pierce has presented an extensive hardscape/landscape plan for the 17,205 square foot Carleton/Molbak property. The project included recirculating ornamental pools, waterfalls, paved areas, a green house, a trellis, planting with a variety of species, and installation of a hot tub. The variance request only covers structures that the Beaux Arts zoning code prohibits within setback areas.

Two additional variances (in addition to the hot tub heard at the May 5, 2004 meeting) are requested in order to 1) construct a landscape structure to encroach 9' into two required 10' side setbacks, and 2) construct a landscape structure to encroach 14.5' into the required 25' rear year setback. The first landscape structure is located at the inward corner of the lot and consists of a shallow landscape pool; the second is located on the eastern portion of the property and consists of a shallow, recirculating pool, half of which is in the setback area. The Beaux Arts Zoning Code prohibits all structures within a setback area, with the exception of a fence or retaining wall. The Code defines "structure" as "that which is erected, built or constructed, including an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, and including the construction or installation of any impervious slabs or surfaces."

Planner Green made the following conclusions regarding the 5 variance criterion and these two variance requests:

1. The variance will not constitute a grant of special privilege with the limitations upon uses of other properties in the town.

*Applicants satisfy this criterion for this variance request, installation of landscape/hardscape features is not a grant of special privilege.*

2. The granting of the variance will not be materially detrimental to the public welfare or injurious to other properties or improvements in the Town. It will be consistent with the town's Comprehensive Plan.

*Applicants satisfy this criterion for this variance request. Properly fenced landscape/water features will not be injurious to other properties or improvements in the Town. The Comprehensive Plan does not prohibit the installation of these features provided that privacy and open space are maintained.*

3. The variance is necessary because of special circumstances relating to the size, shape, topography, location, surroundings, and special features of the subject property.

*Applicants do not satisfy this criterion for this variance request. There is ample room within the 17,205 square foot lot to provide the requested landscape structures. There are no compelling circumstances that would dictate placement of these features in the setback area. There are alternate methods that could be used to provide an acoustical solution to the stated problem of noise from adjacent properties.*

4. The need for a variance has not arisen from actions previously taken by the applicant (owner).

*Applicants satisfy this criterion for this variance request.*

5. It is the minimum necessary to permit the owner reasonable use of the property. *Applicants do not satisfy this criterion for this variance request. "Reasonable use" of the property is permitted without the granting of this variance. As stated previously, there is ample room within the allowed structure area of the lot to accommodate ornamental water features. As a viable alternative, the project could be scaled back to preserve the setback areas.*

Planner Green's conclusion is that both additional variance requests should be denied by the Board of Adjustment for failing to meet two of the five Variance Criteria. Criteria 3 and 5 have not been met.

#### **APPLICANT PRESENTATION:**

Jens Molbak explained that the landscape plan has been designed to deal with the drainage problem on his property and to increase privacy between applicants and their neighbors to the interior southeast corner. Jens Molbak focused his discussion on Variance Criteria no. 3 and 5, which were not satisfied in the Staff Report. Supporting the argument that the variance is needed because of special circumstances relating to the size, shape, topography, location, surroundings, and features of the subject property (with respect to both the splash basin and the drainage gutter), Jen Molbak explained that both parts of this variance, the splash drainage basin and the shallow drainage gutter, provide two critical functions: 1) the dense solid form of the fence limits low frequency sound transmission (drums, stereo bass, I-90), and 2) adding ornamental water sound with the splash drainage basins will allow for excellent screening of high frequency noise between the two properties (human voices). The applicants are making an investment to improve the acoustical situation between the owner's lot and the affected neighbor's lot. The design has been carefully worked out to the benefit of all. In order to achieve the privacy



goal, the splash basin must be located at the base of the fence (thus within setback) and the fence must be located at the corner of the property. The shallow drainage gutter could not exist without going into the setback in this location or elsewhere due to the naturally occurring slope and topography of the Applicant's property which does not begin to rise until just inside of the rear setback. The design must occur at these locations to accomplish its goal, and these features would not be effective located elsewhere on the property. The variance is necessary for both the catch basin and shallow drainage gutter because of the critical locations they are placed at and because of the property's topography and the noise issue caused by the neighbor's non-conforming patio structure these items are designed to mitigate. For both the splash basin and shallow drainage gutter, the design is the minimum necessary to allow the owner to mitigate noise at the non-conforming patio structure where it will be most effective 1) and continue to allow access from the parking/entry at 28<sup>th</sup> street to the front door, and 2) to the upper level bedrooms. The shallow drainage gutter mitigates noise adjacent to the source. The design must occur at these locations to accomplish its goal, and would not be effective located elsewhere on the property.

**PUBLIC TESTIMONY:**

Chairman Welsh stated that there are currently several water features in the Village that are in the setbacks and this issue will have to be addressed at some point. Barbara Welsh asked if the design would take care of the drainage problem between the Welsh's and Molbak's. Jens Molbak stated yes, that it is their hope to mitigate the drainage problem.

The Board members have reviewed the application submittal for the continuation of the hearing for Variance NO. 04-2 (1) splash basin and (2) shallow drainage gutter) against the five variance criteria of Ordinance No. 3133, Section 1.

From the foregoing findings the board made the following conclusions:

***The Board voted unanimously that all 5 criteria were met for Variance 04-2 (2) – splash drainage basin.***

***The Board voted unanimously that all 5 criteria were met for Variance 04-2(3) – shallow drainage gutter.***

**DECISION: Based on the foregoing findings and conclusions Variance No. 04-2 (2) splash drainage basin and Variance NO. 04-2(3) shallow drainage gutter satisfies all 5 variance criteria and both are hereby approved.**

**Meeting adjourned.**

Respectfully submitted,

Betsy Donworth  
Deputy Town Clerk